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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REFLEX MEDIA, INC., a Nevada
corporation,

Plaintiff,

vs.

AARON WALLACE, an individual; et al,

Defendants.

Case No.: 2:18-cv-02423-RFB-BNW

Judge: Hon. Richard F. Boulware, II

Magistrate: Hon. Brenda Weksler

**DEFENDANT AARON WALLACE'S
NOTICE OF MOTION AND MOTION TO
ENLARGE TIME TO FILE A REPLY
BRIEF; MEMORANDUM OF POINTS
AND AUTHORITIES; PROPOSED
ORDER; DECLARATION OF NICOLAS
W. SPIGNER**

NOTICE OF MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF
(Second Request)

PLEASE TAKE NOTICE that Defendant AARON WALLACE (“Wallace”), through his attorneys, SPIEGEL & UTRERA, P.A., and pursuant to Local Rule IA 6-1, Federal Rule of Civil Procedure (FRCP) 6(b), will move this Court for an Order granting a two (2) court-day extension of time for Wallace to file a Reply to Reflex Media, Inc.’s (“Plaintiff”) Opposition [ECF 321] to Wallace’s Motion for Case-Dispositive Sanctions and, Alternatively, Further Discovery and Evidentiary Sanctions [ECF 320]. Specifically, Wallace respectfully requests an extension of two court days (until Tuesday, January 10, 2023), to file a Reply. In support, Aaron Wallace submits the Memorandum of Law which is incorporated below, the Declaration of Nicolas W. Spigner (“Spigner Declaration”) filed herewith, the Courts entire file for this case, and any such oral and documentary evidence as may be submitted at the hearing on this motion, if any.

MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF

I.

MEMORANDUM OF POINTS AND AUTHORITIES

This is a routine Motion to Enlarge made under Local Rule IA 6-1 and Federal Rule of Civil Procedure (FRCP) 6(b). This is Wallace’s Second Request for an extension of time to file a pleading, having previously sought leave to file an untimely response after the subject deadline, due to a technical outage in the Court’s Electronic Filing System [ECF 275]. This is Wallace’s first request for extension of time to file a pleading before the expiration of the subject deadline. (Spigner Declaration ¶ 4).

In the instant matter, Wallace requests additional time to file a Reply Brief in response to Plaintiff’s Opposition [ECF 321] (“Opposition”) to Wallace’s Motion for Case-Dispositive Sanctions and, Alternatively, Further Discovery and Evidentiary Sanctions [ECF 320]

(“Motion”). The Motion was filed on Friday, December 16, 2022, at 4:16 p.m. (Spigner Declaration ¶ 5). Plaintiff’s Opposition was filed on Friday, December 30, 2022, at 9:58 p.m. (PST). (Spigner Declaration ¶ 7). As such, the courts electronic filing system (“ECF”) automatically set the date for Wallace to file a Reply as January 6, 2023. Due to: (1) the Opposition being filed well-after normal business hours (although timely); (2) the New Year’s Holiday; and, (3) the related Court Holiday (1/2/2023), Wallace’s counsel did not receive a notice the Opposition was filed until Tuesday, January 3, 2022. (Spigner Declaration ¶ 11). Effectively, Wallace’s counsel only had four days to file a Reply. (Spigner Declaration ¶ 7). As such, Wallace Respectfully Requests an extension of two (2) court days to file a Reply, on January 10, 2023.

An enlargement of time to file a Reply Brief can be granted under, FRCP 6 and LR IA 6-

1. These rules are set out below:

LR IA 6-1. REQUESTS FOR CONTINUANCE, EXTENSION OF TIME, OR ORDER SHORTENING TIME

(a) A motion or stipulation to extend time must state the reasons for the extension requested and must inform the court of all previous extensions of the subject deadline the court granted. (Examples: “This is the first stipulation for extension of time to file motions.” “This is the third motion to extend time to take discovery.”) A request made after the expiration of the specified period will not be granted unless the movant or attorney demonstrates that the failure to file the motion before the deadline expired was the result of excusable neglect. Immediately below the title of the motion or stipulation there also must be a statement indicating whether it is the first, second, third, etc., requested extension, i.e.:

STIPULATION TO EXTEND TIME TO FILE MOTIONS (First Request)

(b) The court may set aside any extension obtained in contravention of this rule.

(c) A stipulation or motion seeking to extend the time to file an opposition or reply to a motion, or to extend the time fixed for hearing a motion, must state in its opening paragraph the filing date of the subject motion or the date of the subject hearing.

FRCP 6: Computing and Extending Time; Time for Motion Papers

1 (b) Extending Time.

2 (1) *In General*. When an act may or must be done within a specified time, the
3 court may, for good cause, extend the time:

4 (A) with or without motion or notice if the court acts, or if a request is
5 made, before the original time or its extension expires; or

6 (B) on motion made after the time has expired if the party failed to act
7 because of excusable neglect.

8 Under both rules, the moving party is only required to make a showing of excusable
9 neglect if the motion is made after the expatriation of the subject deadline. Since the Motion is
10 made before the expiration of the subject deadline, Wallace is not required to make a showing of
11 excusable neglect. Wallace must support the Motion with reasons (LR IA 6-1), specifically good
12 cause (FRCP 6(b)(1)(A)).

13 As set forth in the Spigner Declaration, the reason good cause exists to extend the time
14 for Wallace to file a brief by two court days: (1) the Opposition being filed well-after normal
15 business hours (although timely); (2) the New Year's Holiday; and, (3) the related Court Holiday
16 (1/2/2023). (Spigner Declaration ¶ 11).

17 **II.** **CONCLUSION**

18 For the foregoing reasons, Defendant Aaron Wallace respectfully requests that the Court
19 grant this Motion for an Enlargement of Time for two court days (Tuesday, January 10, 2023), to
20 file a Reply to Reflex Media, Inc's Opposition [ECF 321] to Wallace's Motion for Case-
21 Dispositive Sanctions and, Alternatively, Further Discovery and Evidentiary Sanctions [ECF
22 320]. Alternatively, Aaron Wallace's Motion for Case-Dispositive Sanctions and, Alternatively,
23 Further Discovery and Evidentiary Sanctions [ECF 320], should be granted.
24

DATED: January 6, 2023

Respectfully submitted,

By: /s/ Nicolas Spigner

Nicolas W. Spigner, Esq.

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Local Counsel for Defendant Aaron Wallace

ORDER

For good cause shown, IT IS ORDERED
that ECF No. 322 is GRANTED.

IT IS SO ORDERED

DATED: 1:17 pm, January 09, 2023



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner, as specified, for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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DATED: January 6, 2023

By: /s/ Nicolas Spigner
Nicolas W. Spigner, Esq.